

COMMITTEE CONFERENCE/EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Valero Cogeneration) 01-AFC-5
Plant)
-----)

CONFERENCE ROOM
250 L STREET
BENICIA, CALIFORNIA

MONDAY, OCTOBER 15, 2001

11:50 a.m.

Reported By:
James Ramos
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Garret Shean, Hearing Officer

STAFF PRESENT

Paul A. Kramer

Jack Caswell

Matthew Layton

APPLICANT

Karen J. Nardi
McCutchen, Doyle, Brown & Emersen, LLP

Lynn McGuire, URS

Sam Hammonds, Valero Refining Company

ALSO PRESENT

Marc D. Joseph, CURE
Adams, Broadwell, Joseph & Cardozo

Dana Dean
Good Neighbor Steering Committee

Katherine Hammer, City of Benicia

Douglas Hall, Bay Area Air Quality
Management District

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1 P R O C E E D I N G S

2 HEARING OFFICER SHEAN: Okay. Good
3 morning, and it's still morning by ten minutes.
4 This is a Committee Conference/Evidentiary Hearing
5 in the Valero proceeding. My name is Garret
6 Shean.

7 What our purposes are today are to take
8 comments on the Revised Presiding Member's
9 Proposed Decision. We have the Final
10 Determination of Compliance to take into the
11 official record of the proceeding, plus any other
12 final submissions by the parties.

13 I should indicate for the record that we
14 are beginning the reported portion of this a
15 little bit late. We, at 10:00 o'clock, went
16 through some of the proposed revisions suggested
17 by the Applicant. Essentially, they were
18 typographical but for the portion dealing with the
19 applicability of Public Resources Code Section
20 25552.

21 What I propose to do after we have
22 introductions is to essentially repeat that, so
23 that comments from any of the parties can be on
24 the record. And so at this point what I'd like to
25 do is allow the parties to introduce themselves.

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1 If you think you're going to be speaking, to come
2 to the microphone and identify yourself.

3 We'll start first with the Commission
4 Staff.

5 MR. KRAMER: Paul Kramer, Staff Counsel,
6 and Jack Caswell, the Project Manager is here
7 along with Matt Layton, who has handled the air
8 quality analysis.

9 MS. NARDI: Karen Nardi, Counsel for
10 Valero.

11 MR. HAMMONDS: Sam Hammonds, for Valero.

12 MS. MCGUIRE: Lynn McGuire, with URS.

13 MR. JOSEPH: Marc Joseph, on behalf of
14 CURE.

15 MS. DEAN: Dana Dean, for Good Neighbor
16 Steering Committee.

17 HEARING OFFICER SHEAN: And I'll just
18 note that the City of Benicia is also present, but
19 apparently thinking they're not going to be making
20 any presentations.

21 Also note that the representative from
22 the Bay Area Air Quality Management District is
23 here, and has provided us today copies of the
24 District's response to comments on the Preliminary
25 Determination of Compliance. It is in a --

1 essentially three -- three element package, which
2 we will docket and which has been photocopied for
3 distribution to those people who are present here
4 today.

5 I guess, since we already are aware of
6 some of the parties' positions with respect to
7 both the conduct of this meeting and other
8 matters, why don't we have an opportunity before
9 we get started for any procedural discussion, and
10 then we'll essentially launch into a repeat of the
11 comment portion of the Committee conference.

12 We know Mr. Joseph has comments. If
13 there are none before him, why don't you go ahead,
14 please.

15 MR. JOSEPH: Thank you, Mr. Shean.

16 This Committee Conference/Evidentiary
17 Hearing, as you have characterized it, is not
18 legal under the Commission's regulations. Section
19 1710(b) of the Commission's regulations requires a
20 ten-day notice before any hearing or workshop, or
21 other public event. The notice for this hearing
22 is dated October 9th, and that's obviously less
23 than ten days ago.

24 This is both a procedural error and an
25 error with substantive effect in -- in a manner

1 that prejudices CURE's right to participate. The
2 lead counsel for CURE and consultant on air
3 quality issues are currently engaged in another
4 hearing dealing with the Valero Refinery, before
5 the Bay Area Air Quality Management District, and
6 the absence of ten days' notice has made it
7 impossible for them to participate today.

8 Secondly, the first part of the
9 Committee Conference/Evidentiary Hearing, or
10 workshop, however it was characterized, was not on
11 the record since there was no reporter present.
12 Section 1105(b) of the Commission's regulations
13 require Committee Conferences and Evidentiary
14 Hearings to be on the record.

15 Third, the Revised PMPD which is being
16 considered today is not based on evidence in the
17 record, as required by Section 1751, because the
18 final DOC was not in the record when it was
19 issued. Moreover, the Commission has not allowed
20 15 days for comment on the Revised PMPD, as
21 required by Section 1753, or, in fact, provided
22 any opportunity for comment to the Commission on
23 the Commission's promulgation of the final DOC.

24 Moreover, the Revised PMPD does not
25 respond to comments on the final DOC, as required

1 by Section 172 -- 1752.5, obviously, since there
2 has been no opportunity to comment at this point.
3 And even on the Committee's schedule, there will
4 be no response to comments for any comments which
5 are submitted up to the time of the hearing on
6 Wednesday.

7 Because of this violation of Section
8 1752.5, the Committee will not be complying with a
9 requirement which derives from CEQA, which has
10 neither been waived in this proceeding, nor is it
11 waive-able under any executive order. If the
12 Committee proceeds -- if the Commission proceeds
13 to consider a Proposed Decision for which it has
14 not responded to comments, as required by its
15 regulations, it will be proceeding in direct
16 violation of the Commission's own rules.

17 Along the way during this proceeding,
18 there have been a number of other procedural
19 violations of the Commission's rules, which I
20 won't enumerate at this point.

21 All of these violations are premised on
22 the face of the Revised PMPD, which gives no
23 suggestion at all that this Commission is
24 considering the process, or is considering making
25 a decision based on Section 25552 of the Public

1 Resources Code. And the Committee cannot -- the
2 Commission cannot on Wednesday make a decision
3 based on 25552, because there are no findings in
4 the Proposed Decision which are required by
5 25552(d). In fact, there's no mention of 25552 at
6 all in the Proposed Decision. 25552(d) requires
7 three findings, at least two of which cannot be
8 made; (d)(1) of 25552 requires that it -- it
9 allows the use of that section only where there is
10 not a modification to a major source. There's no
11 dispute in this case that this project would be a
12 modification to a major source, that is, the
13 Valero Refinery.

14 There is also no evidence in the record
15 of the second half of the requirements set forth
16 in 25552(d)(3), which requires that there be a
17 contract to secure skilled labor to construct the
18 proposed facility. You could have a -- a
19 discussion about statutory interpretation, and I'm
20 sure we will do that in the future. Suffice to
21 say at this point there is not a contract, and the
22 contract with the general contractor does not
23 satisfy the requirement of that provision.

24 Second, even if the Commission were
25 intending to proceed under 25552, and suspend

1 these requirements of 25552 pursuant to the
2 Government -- Governor's order, it needs to make
3 findings and enter an order suspending these
4 requirements, neither of which have been proposed
5 or done. And to do so, it would have to have
6 evidence to support the appropriate findings. And
7 there is none, and there's been no attempt to
8 gather such evidence or present such evidence for
9 comment.

10 So, in summary, I think it's -- it's
11 inappropriate and illegal to proceed with this
12 hearing. It will further prejudice CURE as a
13 party to this case, and will not move the
14 Commission any closer to making a final decision
15 on the case, since the Commission cannot legally
16 act on Wednesday.

17 Thank you.

18 HEARING OFFICER SHEAN: Thank you.

19 Any comments or responses?

20 MR. KRAMER: Not necessarily touching
21 every point.

22 All along, Staff has -- has recommended
23 that this -- this project be reviewed under the
24 four-month process, and as early as the Staff
25 Assessment we have proposed findings, and we

1 continue to make that recommendation. We believe
2 there is adequate evidence in the record to
3 support those findings. And there -- there is a
4 recent declaration filed by Mr. Roche, from --
5 from Valero, that -- that adds a significant
6 amount of evidence towards those issues.

7 And we believe that if the Commission
8 finds that this is properly within the provisions
9 of the four-month statute, then the procedural
10 requirements that Mr. Joseph has been citing are
11 -- will be inapplicable.

12 So that -- that is the basis for our
13 strong recommendation that the Committee recommend
14 to the full Commission that -- that they find that
15 it -- if fits within the four-month process,
16 although I don't see any -- any fatal -- any
17 fatality in the Commission first making those
18 findings itself on Wednesday. But I -- I think it
19 would be best if the Committee, if it can consider
20 those issues. And it would make for a cleaner
21 record, and an easier hearing if they can propose
22 those findings to the full Commission.

23 Let's see. I don't believe there's any
24 requirement that a separate order be made to
25 suspend the requirements of -- of 25552, and the

1 way we've structured it is that it would be
2 suspended in the making of those findings that
3 we've proposed.

4 I think I'll conclude right there.

5 HEARING OFFICER SHEAN: Okay.

6 MS. NARDI: Yes. On behalf of Valero,
7 I'd like to concur with what Mr. Kramer has said,
8 and expand on it.

9 We of course agree with Mr. Joseph that
10 there are no 25552 findings in the PMPD. But we
11 disagree strongly that the processing this
12 application under that section of the law would be
13 unfair. There's been abundant notice to everyone
14 involved in this proceeding that the issue of the
15 four-month process and the findings has been in
16 play for many months.

17 I quickly went through my notes. I may
18 not have all these dates correct, and I certainly
19 can get them correct by Wednesday, but let me
20 briefly recap.

21 The Staff Assessment, as Mr. Kramer
22 pointed out, discusses and makes recommendations
23 with respect to the four-month process and why it
24 would be appropriate to handle this application
25 under that expedited procured. And recall that

1 this is an expedited procedure that the Governor,
2 following his declaration of a state of emergency
3 with respect to energy in the State of California,
4 laid out so that we would have an ability to both
5 preserve the Commission's requirements for
6 fairness and public notice, but also move quickly
7 with matters of considerable public importance.

8 On July 12th, the initial public
9 hearing, we had testimony from individuals at
10 Valero that go directly to the evidence that's
11 needed to support those findings. The CEC Staff,
12 Mr. Kramer prepared his first brief on General
13 Condition 10, which relates to the special
14 findings on August 27th, well over a month ago.
15 We were discussing the details of the
16 applicability of the four-month process.

17 In addition, then the CEC Staff put
18 together a brief on September 20th, and I would
19 note that Mr. Joseph's own colleague himself
20 briefed this issue on the applicability of the
21 four-month findings on September 20th. So, again,
22 we have CURE itself well aware of the issue and
23 actually filing a brief on the topic.

24 Then we had a second public hearing on
25 September 28th. We provided additional evidence,

1 Mr. Hammonds did, and I discussed some of the --
2 the evidence that had already been put into the
3 record that support and provide a basis for the
4 Commission to make the necessary findings. We
5 supplemented that, at the request of Mr. Shean,
6 with a declaration from Mr. Roche of the Valero
7 Refinery on October 5th, and we had a second brief
8 from the CEC Law Department Staff on October 9th.

9 So there's been abundant evidence to
10 every -- abundant notice to everyone involved in
11 this process that -- that this has been a concern,
12 and we do feel that the full Commission can act on
13 the question that will be put before them on
14 Wednesday.

15 The proceeding has been expedited, but
16 it's been very fair to all parties. There's been
17 a series of workshops, we've had hearings, the Air
18 District has worked hard to respond to all of the
19 comments that have been raised, EPA's comments,
20 the Applicant's comments, and CURE's comments, and
21 I think some positive changes have been put into
22 the final air permits as a result of that work.

23 So Valero, of course, is urging the
24 Commission to make the findings, and we do believe
25 that there's more than ample evidence to support

1 those findings on Wednesday.

2 HEARING OFFICER SHEAN: Okay. I'm not
3 in a position to dispose of the matter. I think I
4 indicated earlier, when we were discussing this,
5 prior to our having a court reporter here, that
6 the appropriate place for the parties to argue
7 their positions on the applicability of 25552 is
8 before the full Commission, as well as any of the
9 issues that relates to procedural infirmities or
10 substantive inadequacies in the Revised Presiding
11 Member's Proposed Decision.

12 So, Ms. Dean, do you have a comment?

13 MS. DEAN: One quick question.

14 HEARING OFFICER SHEAN: Well, why don't
15 you -- we need you to come up here. We have this
16 one here. If you want to, you can draw a chair up
17 and join us.

18 MS. DEAN: One quick question. When
19 will we have access to this transcript?

20 HEARING OFFICER SHEAN: It's probably
21 not going to be prior to Wednesday.

22 MS. DEAN: Okay. Then I have one
23 comment.

24 HEARING OFFICER SHEAN: And let me
25 indicate the court reporter nodded in agreement

1 with that assessment, which means it will not be
2 available prior to Wednesday.

3 MS. DEAN: Okay. Given that I'm not
4 going to have an opportunity to take a look at
5 this, then, before Wednesday, I would like to make
6 one comment on this.

7 Generally, and actually, since I'm going
8 to have to leave, I'm going to go ahead and just
9 give you my whole story.

10 Generally, I feel very good about the
11 process and what's -- what's happened, and the
12 general overlap of regulatory considerations and
13 concerns. And I certainly respect Valero's effort
14 to meet the standards that have been requested and
15 required of them.

16 I do take exception to one thing that
17 you said, and that is -- I'm referring to Valero's
18 attorney -- I can't say that the process has been
19 fair to all parties, because as a member of the
20 public and not a paid professional, those of us in
21 the public have not really had a fair opportunity
22 to look into all the matters before us.

23 I can say for my part, and for the Good
24 Neighbor Steering Committee's part, that we have
25 made a determination that it has been acceptable.

1 And part of that is because we're willing to make
2 some compromises based on the emergency situation
3 that California finds themselves in, Californians
4 find themselves in. But I do have to state that
5 for future reference, if a four-month process like
6 this is going to go on, it should be done with
7 more consideration given to the public and making
8 the information accessible, whether that's through
9 the Public Adviser or whatever method.

10 Again, we -- we made a determination
11 that the compromises are necessary for the moment,
12 for the situation we find ourselves in, but it has
13 not been a perfect process.

14 So, but thank you to everybody, anyway.
15 Thanks.

16 HEARING OFFICER SHEAN: Thank you. And
17 yes, we know it has been like jumping on a moving
18 freight turn for you.

19 MS. DEAN: Yes.

20 HEARING OFFICER SHEAN: And -- and
21 you've done a great job.

22 MS. DEAN: Well, thank you.

23 HEARING OFFICER SHEAN: Okay. All
24 right. As I indicated, there's -- I'm not going
25 to dispose of this issue here. What we'll do is

1 leave this for the full Commission to grapple with
2 on Wednesday. What I would propose to do is
3 basically go back over some of what we did
4 earlier, and just indicate for the record that
5 Valero has submitted -- I think this was received
6 by us on Friday, their comments on the Revised
7 PMPD.

8 They've made two -- two pages of
9 suggestions. We've gone over them initially. It
10 may be that there are some comments to the
11 acceptability of any of these changes, so I'm just
12 going to go through them again and see if there
13 are.

14 On page two of the comments, under the
15 hearing Requested Corrections, their item number
16 two, it was on page 29, this appears to be
17 basically conforming the numbers in terms of PM10
18 in pounds per hour, for each of the tower trains.
19 It's with the FDOC, and in other places in the
20 Revised PMPD. It appears that what happened was
21 that it was revised, the PMPD was revised in part,
22 but these numbers were missed, so this is merely a
23 -- essentially a technical exercise in changing
24 those numbers out.

25 Does anybody have a comment with regard

1 to the acceptability of this item number two of
2 Valero? Okay.

3 Item number three of theirs was on the
4 same page, 29, to strike the words "for a new
5 district permitted steam boiler", since that was
6 inapplicable, under the section called "Sulfur
7 Dioxide." Is there any comments on that?

8 All right. Hearing none, let's move to
9 item number four, which is on page 32. This is a
10 correction that will conform the definition of gas
11 turbine start-up mode to that that appeared in the
12 final DOC, and essentially has to do with the
13 number of consecutive minutes to demonstrate
14 stable operation.

15 If there are any comments on that, we
16 can hear them at this point. All right. Hearing
17 none, we're going to go ahead and make that
18 change, and then move on to item number five,
19 which appears on page 33.

20 Valero is asking that the references to
21 boiler -- source number 38, 39 and 41, which are
22 boilers, which are described as part of the
23 curtailment group, be reinstated. They were
24 essentially stricken in the revision, and Valero
25 has indicated that in discussions with the Air

1 District, that they had not wanted these
2 particular boilers in the list, but that the
3 reason to -- as it appears in the FDOC, but as it
4 appears in the Energy Commission's Revised PMPD,
5 that they are appropriate to be there as a
6 descriptor of the -- that portion of the
7 curtailment group which is created by the
8 surrendering of certificates to the district.

9 The district's format also did not
10 contain the number of tons per year as a separate
11 column, and Valero has essentially amended its
12 proposed corrections so that the -- the numbers
13 that are shown there in tons per year would not be
14 included in the revision.

15 If there -- are there any comments on
16 this particular one?

17 Okay. Hearing none, we're going to take
18 that and move on to item number six, which appears
19 on page 40, and requests that it be indicated that
20 the refinery fuel gas which is being referred to
21 is that which is fired in certain sources which
22 are identified as part of the project, as -- as
23 1030, 1031, 1032, and 1033. That appears to be
24 acceptable. Is there any comment on those?

25 The same condition, 19 sub (h), is to

1 indicate that the PM10 limit is an annual limit in
2 the third sentence of 19(h). Do we have any
3 comment? Oh, and also that the average over any
4 consecutive 24 hour period be dropped. Any
5 comment on that?

6 All right. In the absence of comment on
7 that, we'll take that and move to item number
8 eight, which is on page 44, Condition Number 27.
9 I'm sorry, there we go. Which is to revise the
10 language of that condition by dropping the second
11 sentence, and stating that the owner or operator
12 shall notify the district of any violations of
13 these permit conditions consistent with the
14 requirements of the Title 5 permit. And the
15 verification language is amended to be consistent
16 with that. And in the discussion we had was that
17 the Title 5 has its own violation reporting
18 requirements, and that rather than state something
19 that may be at variance of that, it would just be
20 a matter of stating that the reporting be done
21 pursuant to Title 5. We're prepared to take
22 that, unless there are comments.

23 MR. KRAMER: There was one addition that
24 Staff proposed --

25 HEARING OFFICER SHEAN: Yes.

1 MR. KRAMER: -- and that was to have it
2 -- the notification go to the district and to the
3 CEC CPM, as well.

4 HEARING OFFICER SHEAN: Okay. And that
5 would be in the verification in the first line.
6 Right?

7 MR. KRAMER: Yes.

8 HEARING OFFICER SHEAN: Okay.

9 MR. KRAMER: It might also fit in the
10 Condition, too, so they're conformed to each
11 other.

12 HEARING OFFICER SHEAN: Okay. Any
13 comments about those changes? All right, we'll
14 move ahead with that, then.

15 Lastly, it appears on page 47, and Air
16 Quality Number 41 is to change the submission date
17 from 90 to 10 days, with respect to that
18 particular item. And we notice that for
19 Conditions AQ-35, 36, 37, 38, and 39, there had
20 been no previously submitted verification
21 language, and Staff has offered to come up with
22 that, and CURE has entered an objection that in
23 the absence of that language, it cannot fully
24 review the Revised Presiding Member's Proposed
25 Decision.

1 And that's where we are with -- with
2 those.

3 MR. JOSEPH: Mr. Shean.

4 HEARING OFFICER SHEAN: Yes.

5 MR. JOSEPH: Having now gone through the
6 list, I just wanted to note for the record that we
7 reserve our right to comment on the Revised PMPD,
8 and we expect that we'll receive responses to
9 those comments as required by CEQA and the
10 Commission's rules before the Commission makes a
11 decision on this project.

12 HEARING OFFICER SHEAN: All right. As
13 I've indicated, once we're through here, it pretty
14 much is going to be in the Commission's lap to
15 determine what will be done from here on out, so
16 we'll expect you to make that argument before the
17 full Commission on Wednesday.

18 Okay. Were there comments from any
19 other party for substantive changes to the Revised
20 PMPD?

21 I'll just indicate that when we were
22 discussing this matter informally, without the
23 court reporter present, that neither Ms. Dean, on
24 behalf the Intervenor, nor the City of Benicia,
25 had any substantive comments. And I think at the

1 time, neither did Mr. Joseph. But you are
2 proposing that you will submit comments for a
3 response. Is that -- that correct?

4 MR. JOSEPH: We're reserving our rights
5 at this point. The Commission has not issued the
6 Revised PMPD which contains the final DOC.

7 HEARING OFFICER SHEAN: All right. Well
8 --

9 MS. NARDI: Mr. Shean.

10 HEARING OFFICER SHEAN: Yes.

11 MS. NARDI: Just -- since the City of
12 Benicia spoke when we did not have the court
13 reporter present, would it be troublesome to ask
14 that they repeat what they said, just so that we
15 have a complete record and we don't have that as a
16 potential obstacle, or --

17 HEARING OFFICER SHEAN: Sure.

18 MS. NARDI: -- uncertainty. Thank you,
19 we would appreciate that.

20 MS. HAMMER: I'm Kitty Hammer,
21 representing the City of Benicia, and the city is
22 satisfied with the Revised PMPD as amended here
23 today.

24 HEARING OFFICER SHEAN: All right.
25 Thank you.

1 And we want to thank the City of Benicia
2 not only for your hospitality, in terms rooms for
3 our hearings here and over in the library, but for
4 getting on board in the process as quickly as it
5 was moving, and supplying us both valuable and
6 needed information, particularly on issues that
7 were significant to the city. And I think
8 overall, the process, as well as substantively the
9 decision has benefitted from your participation.

10 So, thank you, on behalf of the
11 Committee.

12 Now, the only other matter which I'm
13 going to at least attempt to start -- if it
14 doesn't go it'll be continued to the full
15 Commission's hearing -- is the matter of taking
16 into evidence the FDOC and its appendices. And we
17 have it -- having been submitted last week, along
18 with the appendices which I believe -- Mr.
19 Caswell, can you describe what distribution you
20 made of that?

21 MR. CASWELL: Jack Caswell, the
22 California Energy Commission Project Manager. And
23 yes, I did an electronic distribution of the FDOC
24 from the district to the Intervenors, as well as I
25 docketed a hard copy of that document and asked

1 for distribution of that document to the proof of
2 service list. And that was done -- I'm a blank
3 here -- I believe it was last Monday.

4 HEARING OFFICER SHEAN: Okay. I think
5 it wasn't Monday, it was --

6 MR. CASWELL: It was a holiday -- it had
7 to be the previous Friday, then. I'm drawing a
8 blank on the -- the date right now.

9 HEARING OFFICER SHEAN: Okay. Well, you
10 -- you can -- I believe it -- my recollection is
11 that the full thing was on Tuesday.

12 HEARING OFFICER SHEAN: I believe it --
13 my recollection is that the full thing was on
14 Tuesday.

15 MR. CASWELL: I believe I got the full
16 document, now that I think about it.

17 HEARING OFFICER SHEAN: Because Monday
18 was a holiday.

19 MR. CASWELL: Right, Monday was a
20 holiday. I apologize for my --

21 HEARING OFFICER SHEAN: And -- that's
22 okay. This is -- because my recollection is you
23 got it in pieces, and had to put it together in a
24 final aggregated document.

25 MR. CASWELL: Right, and I received hard

1 copies today from the Air District of that FDOC,
2 and I will docket the hard copies that they have
3 provided us, just as an insurance that, as I
4 pieced together this document electronically, that
5 it does match.

6 HEARING OFFICER SHEAN: Okay. Is there
7 objection to the -- yes, sir, do you have some
8 comments you'd like to make?

9 MR. HALL: Yes.

10 HEARING OFFICER SHEAN: If you don't
11 mind, we'll ask you to come up to the -- to the
12 mic. Now, identify yourself first, and then go
13 from there.

14 MR. HALL: Douglas Hall, with the Bay
15 Area Air Quality Management District.

16 I did receive a comment on the FDOC from
17 Valero, which was Condition 19-H, which talks
18 about the hourly limit being at 4.65 pounds per
19 hour averaged over any consecutive 24 hours. That
20 hourly number is a maximum, so it can't be
21 averaged. So the district does -- intends to
22 strike out "average over any consecutive 24 hours"
23 from Condition 19-H. And that's consistent with
24 the comment that Valero made to the CEC.

25 Also, I received a comment from EPA

1 regarding Condition Number 20, on the sulfuric
2 acid emissions. The combined sulfuric acid
3 emissions shall not exceed seven tons in any
4 consecutive four quarters. It really should --
5 shall not equal or exceed, since seven is the
6 actual trigger level for PSD. So the district
7 moves to go ahead and correct that, and put equal
8 and not exceed seven tons.

9 Those are the only two changes proposed
10 to the FDOC.

11 HEARING OFFICER SHEAN: Okay. The first
12 one we had discussed earlier. The second one
13 here, equal or exceed, do any of the parties want
14 to comment on that?

15 MR. CASWELL: It's okay with Staff.

16 MR. HALL: And I just have one other
17 comment, which I didn't bring up at the time that
18 it was raised, regarding the FDOC Condition Number
19 2, on the curtailment group, which does not
20 include the three shutdown boilers.

21 It is the position of the district that
22 -- that we -- we define that in the text, but
23 leave it out of the condition, since those three
24 shutdown boilers will be shut down 90 days after
25 startup, and there's no need to have them as part

1 of the condition. In the event that Phase 2 does
2 not come to be, we can go ahead and modify
3 Condition Number 2, to include any boilers that
4 would still be existing as part of that bubble,
5 but we did reflect the contribution of those
6 emissions reductions as part of that credit.

7 Those are all the comments I have.

8 HEARING OFFICER SHEAN: Okay. Thank you
9 very much.

10 MR. CASWELL: And actually, to -- this
11 is Jack Caswell, again -- to clarify the
12 distribution -- I have to look at my notes here.
13 I actually sent out the first original pieces of
14 the FDOC on the 12th -- excuse me, the 5th of
15 October, and there was one subsequent appendix
16 that came in on Tuesday, the 9th, to me, and I did
17 a distribution of that on the 9th.

18 HEARING OFFICER SHEAN: Okay. Well, the
19 question's on the floor here. Is there objection
20 to the admission into evidence of the FDOC and its
21 appendices?

22 MR. KRAMER: No.

23 MR. JOSEPH: No additional objection,
24 other than the objections that I previously
25 stated.

1 HEARING OFFICER SHEAN: Okay. Then
2 subject to the ruling by the full Commission,
3 we'll take the FDOC and its appendices into the
4 record.

5 Are there any other matters before the
6 Committee?

7 MS. NARDI: Well, two things. One is if
8 we haven't already taken into the record the --
9 the Air District response to the comments, I would
10 like to have that happen, and I have one question
11 for Mr. Layton.

12 HEARING OFFICER SHEAN: All right. Is
13 there objection to the admission into the record
14 of the three-part responses to the PDOC that has
15 been brought to the meeting here today by the
16 district?

17 MR. JOSEPH: May I just have a standing
18 objection to any -- admission of any evidence into
19 the record?

20 HEARING OFFICER SHEAN: Sure.

21 MR. JOSEPH: Thank you.

22 MR. KRAMER: None from the Staff.

23 HEARING OFFICER SHEAN: Okay. Did you
24 have a question of Mr. Layton?

25 MS. NARDI: Yes. I had a question. EPA

1 had filed with the CEC and with the Air District
2 two sets of comments and two letters on the air
3 permit for Valero. And I wanted to ask you
4 whether EPA's objections have now been satisfied.

5 MR. LAYTON: This is Matthew Layton.

6 MR. JOSEPH: Before you answer that, I
7 have an objection.

8 HEARING OFFICER SHEAN: Sure. And
9 you'll note I did not swear him in, because he
10 cannot testify as to EPA's satisfaction. He can
11 testify as to any discussions that they've had
12 with him, and so on, like that. So we understand
13 the weight that this should be accorded.

14 MR. JOSEPH: Thank you. You anticipated
15 my objection.

16 MR. LAYTON: I anticipated it, as well.
17 In my discussions with EPA, I believe they have --
18 I believe they have reached an agreement with the
19 district, and at this point in time are not filing
20 anymore letters and comments on the FDOC.

21 But, again, EPA is not here to represent
22 that themselves, but at this point in time I think
23 we have a document that they find satisfactory.

24 HEARING OFFICER SHEAN: Okay.

25 MS. NARDI: Thank you.

1 HEARING OFFICER SHEAN: I think the
2 Committee and the Commission believe that the EPA
3 by its actions will tell us whether they have a
4 problem with the FDOC that's before us.

5 Okay. Is there anything in addition to
6 what we've done that's before -- should be brought
7 before the Committee?

8 MS. DEAN: I would ask for one more
9 clarification.

10 On the documents -- I'm sorry, Dana
11 Dean, Good Neighbor Steering Committee. On the
12 documents that we just received today, Bay Area
13 Air Quality Management District's response to
14 CURE's comments, and the three different sets that
15 have been referred to. I'm confused about whether
16 there will be any opportunity to respond to this
17 document, at all. These three documents. And I'm
18 hoping somebody can tell me.

19 HEARING OFFICER SHEAN: A response to
20 the --

21 MS. DEAN: Yeah.

22 HEARING OFFICER SHEAN: -- district's
23 response?

24 MS. DEAN: Yeah. Yes.

25 HEARING OFFICER SHEAN: Okay. I expect

1 that insofar as the district is concerned, maybe
2 you can describe whether or not there is a
3 procedure to do that, and if so, what it is. And
4 if not, the fact that there isn't. Okay. Sure.
5 Why don't you just swap seats, if you don't mind.

6 MR. HALL: Doug Hall, with the Bay Area
7 Air Quality Management District.

8 The district procedures allows us to
9 consider all comments prior to issuance of the --
10 of the FDOC. The district staff has completed
11 that effort, and at this time there is no
12 provision that allows for a response to comments.
13 However, if someone wanted to respond we're not
14 going to inhibit them from doing that. But it's
15 not part of our procedure.

16 The only requirement is that we review
17 and consider all of the comments prior to approval
18 of the FDOC.

19 HEARING OFFICER SHEAN: Okay. I think
20 that states it.

21 All right. Anything further?

22 All right. With that, I guess what
23 we're going to do is see everybody on Wednesday,
24 at -- at or after 10:00 a.m., and go from there.

25 What I'm going to attempt to do, let me

1 indicate, is to give us a copy of this document
2 that does not have the red line strike-out, first
3 of all, make it a little less confusing, a little
4 more readable. And so my intention is to try to
5 have that ready by Wednesday morning.

6 Okay. With that, we are adjourned.
7 Thank you.

8 (Thereupon the hearing was adjourned
9 at 12:35 p.m.)

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CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any parties to said Hearing, nor in any way interested in the outcome of said Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of October, 2001.

JAMES RAMOS

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